

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

2:09-CR-78 JCM (RJJ)

Plaintiff,

v.

SAMUEL DAVIS and SHAWN RICE,

Defendants.

**ORDER**

Presently before the court are the report and recommendations of United States Magistrate Judge Robert J. Johnston. (Doc. # 169, #170, and #171).

Upon reviewing defendant Shawn Rice's motion to dismiss (doc. # 139), Judge Johnston recommended that the motion be denied.

Judge Johnston's recommendation is pursuant to Local Criminal Rule 47-9, which states that "[t]he failure of a moving party to file points and authorities in support of the motion shall constitute a consent to the denial of the motion." This court is inclined to deny the motion on the grounds that defendant Rice consented to the denial by failing to file points and authorities, and not providing the court with any supporting statutes or case law.

Further, the defendant asserts that his charge should be dismissed because he reserved his rights under UCC § 1-308. This court agrees with judge Johnston's holding, that since there is no valid sales contract or commercial transaction, UCC § 1-308 does not apply.

Judge Johnston held that Rice's assertion that the court and the government have violated 18 U.S.C. §§ 241 and 242 was without merit, due to the fact that defendant failed to cite to any facts

1 or law that support these allegations. This court agrees.

2 With regards to defendant Rice's motion for subpoena duces tecum or, in the alternative, to  
3 dismiss with prejudice (doc. #72), and after considering the government's response (doc. #74), judge  
4 Johnston recommended that the motion be denied.

5 The defendant asserted that the government should produce valid letters of marque and  
6 accompanying documentation, or in the alternative, that the officers or agencies that arrested him  
7 lacked a valid letter of marque. In Judge Johnston's recommendation, he concluded that letters of  
8 marque not only do not exist any longer, but do not remotely apply to this case. Further, he held that  
9 under 18 U.S.C. 3231, the district court properly had original jurisdiction over defendants, like Rice,  
10 who are accused of violating United States laws.

11 Lastly, upon judge Johnston's review of the defendant's motion to dismiss for lack of subject  
12 matter jurisdiction, lodgment of proof of priority claim and relief requested and memorandum of  
13 maxims (doc. #115), and of the government's response (doc. #116), he recommended that the motion  
14 be denied.

15 Defendant's motion fails due to the facts already stated, that the district court has jurisdiction  
16 under 18 U.S.C. § 3231 over defendants who violate United States laws such as Rice, and that under  
17 Local Criminal Rule 47-9, a failure to file points and authorities in support of a motion "shall  
18 constitute a consent to the denial of the motion."

19 Pursuant to Local Rule IB 3-2, the parties may file specific written objections to this report  
20 and recommendation within fourteen days of receipt. Objections to the report and recommendation  
21 were due on October 4, 2010. To date, no objections have been filed.

22 Upon review of the magistrate judge's findings and recommendations (Doc. # 169, #170, and  
23 #171) and there not being any objections,

24 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that United States Magistrate  
25 Judge Robert J. Johnston's report and recommendations (Doc. #169, #170, and #171) are  
26 AFFIRMED in their entirety. The defendant's motion to dismiss (#139), motion for subpoena duces  
27 tecum or, in the alternative, to dismiss with prejudice (doc. #72), and motion to dismiss for lack of  
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1 subject matter jurisdiction, lodgment of proof of priority claim and relief requested and  
2 memorandum of maxims (doc. #115) are DENIED.

3 DATED October 29, 2010.

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6 UNITED STATES DISTRICT JUDGE